

Response dated 2/24/2005  
Reply to Office Action dated 8/25/2004

Application No 09/560,064

### **REMARKS**

The Office Action of August 25, 2004 has been reviewed and the comments therein were carefully considered. Claims 1, 9, and 40 have been amended by the current response. Claim 6 has been canceled by the current response. Claims 1-5, 7-9, and 40-49 are currently pending.

### **Rejections under 35 USC §102**

Claims 1-9 and 40-49 are rejected under 35 USC §102(b) as being anticipated by Snell U.S. Patent No. 5,456,691. Applicants have amended claims 1, 9, and 40 to more particularly describe the invention.

Snell discloses a programmer in which a control program for an implantable medical device is constructed from program modules that are selected by a physician. (Abstract). The modules may be individually loaded into the implantable medical device or may be combined into a single program, without necessitating an increase in the memory capacity of the implantable device. (Col. 2; lines 7-10).

With regard to currently amended independent claim 1, Snell does not disclose, teach, or suggest at least the claimed feature of "accessing with the patient programmer via telemetry at least two preset clinician therapy programs stored in the medical device." (Emphasis added). Support for the claimed feature of "accessing with the patient programmer" can be found beginning on page 11, line 8 which states:

In an embodiment of the present invention, as will be discussed below, a patient can access the preset clinician therapy programs (PCTP) stored in the INS via the patient programmer 50. The patient programmer 50 can comprise a graphical display screen 60, an input medium or device 70, a patient program controller 55, memory 75 and a telemetry block 65. Having accessed a PCTP, the patient can then create at least one personalized therapy program from the accessed PCTP. The patient can then store the new personalized therapy program in the INS 50 via the patient programmer 50 input device 70.

Response dated 2/24/2005

Application No 09/560,064

Reply to Office Action dated 8/25/2004

... First, a patient would turn the patient programmer 50 ON and start the process in a first Start Screen. Second, the patient would select a Review function and interrogate the INS 5 via the input device 70. The patient would then select a Select Menu function that brings up a Selection Screen on the graphical display screen 60. The Selection screen would display a Menu indicating the various preset clinician therapy programs (PCTP) 170 (discussed in more detail with reference to Figure 5) that are resident in the INS memory 100. The patient could then scroll through the Menu (on the graphical display screen 60) and select the particular PCTP 170 that he/she wishes to access in order to create at least one personalized therapy program. Having accessed a PCTP 170, the patient can then review and modify the preset clinician therapy settings (PCTS) 180 (discussed in more detail with reference to Figure 5) that correspond to the accessed PCTP 170. The patient may then select and optimize a PCTS 180 as necessary or desired by use of the graphical display screen 60 and the input device 70.

As can be seen from at least the above cited section of the specification, a patient's commands and instructions are being implemented "with the patient programmer." It is respectfully submitted that Snell does not disclose, teach or suggest at least the claimed element of "accessing with the patient programmer . . . ." Snell is concerned with loading of individual modules into memory of a device, without necessitating an increase in the memory capacity of the device. This loading of the individual modules is accomplished by a physician or trained specialist prior to any use by a patient. For example, Column 4, line 27 of Snell states

The physician selects program modules corresponding to those therapies and diagnostic routines that are thought to be most effective for treating the patient at step 34 . . .

Applicants submit that there is no disclosure or suggestion in Snell of a patient using a "patient programmer" to access present clinical therapy programs.

Furthermore, claim 1 is allowable for at least an additional reason. Currently amended claim 1 includes the feature of "storing the personalized therapy program in the patient programmer." (Emphasis added). Snell does not disclose, teach, or suggest this claimed feature. Therefore, for at least these reasons, it is respectfully submitted that claim 1 is patentably distinct

Response dated 2/24/2005  
Reply to Office Action dated 8/25/2004

Application No 09/560,064

over Snell. Dependent claims 2-8 are allowable for at least the same reasons as independent claim 1.

Similar to claim 1, independent claims 9 and 40 also contain the claimed feature of "accessing with the patient programmer . . . ." Therefore for at least the same reason discussed above with respect to claim 1, independent claims 9 and 40 are allowable. Dependent claims 41-49 which ultimately depend on claim 40 are allowable for at least the same reason as independent claim 40.

Claims 1-2, 4-5, 9 are rejected under 35 USC §102(b) as being anticipated by Ford et al., U.S. Patent No. 5,681,285. Applicants have amended claims 1, and 9 to more particularly describe the invention.

Ford discloses a drug library containing a plurality of drug entries for use in a syringe pump. A standard drug library may be customized with additional drug entries through the use of a personal computer (PC). (Col. 11, lines 30-33). The customized drug library containing the supplementary drug entries may be downloaded into the syringe pump and utilized to administer selected therapeutics. (Col. 11, lines 33-38).

With regard to currently amended independent claim 1 and 9, Ford does not disclose, teach, or suggest at least the claimed feature of "accessing with the patient programmer via telemetry at least two preset clinician therapy programs stored in the medical device." (Emphasis added). It is respectfully submitted that Ford does not disclose, teach or suggest at least the claimed of "accessing with the patient programmer via telemetry. . . ." (Emphasis added).

Ford is concerned with using a customizable drug library with a syringe pump. Applicants respectfully submit that there is no disclosure or suggestion in Snell of a patent using

Response dated 2/24/2005  
Reply to Office Action dated 8/25/2004

Application No 09/560,064

a patient programmer to access present clinical therapy programs. In addition, Ford does not utilize nor discuss telemetry between a medial device and a patient programmer as claimed in both independent claims 1 and 9. Therefore for at least these reasons, independent claims 1 and 9 are in condition for allowance. Dependent claims 2 and 4-5 which ultimately depend on claim 1 are allowable for at least the same reason as independent claim 1.

**Rejections under 35 USC §103**

Claims 45 and 46 are rejected under 35 USC §103(a) as being unpatentable over Snell U.S. Patent No. 5,456,691. Applicants respectfully traverse the rejection

Applicants therefore respectfully request reconsideration of the pending claims and a finding of their allowability. A notice to this effect is respectfully requested. Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

Date: February 24, 2005

Respectfully submitted,

By: William J. Allen 51,393  
William J. Allen  
Registration No. 51,393  
BANNER & WITCOFF, LTD.  
10 South Wacker Drive, # 1000  
Chicago, IL 60606  
Telephone: 312-463-5000  
Facsimile: 312-463-5000